

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on
the twenty-fourth day of June, in the year two thousand and nine:
present,

HON. MARGARET H. MARSHALL)	
)	
HON. RODERICK L. IRELAND)	
)	
HON. FRANCIS X. SPINA)	Justices
)	
HON. JUDITH A. COWIN)	
)	
HON. ROBERT J. CORDY)	
)	
HON. MARGOT BOTSFORD)	
)	
HON. RALPH D. GANTS)	

ORDERED: That the Massachusetts Rules of Appellate Procedure adopted by order
dated July 1, 1973, as amended, to take effect on July 1, 1974, are hereby amended as follows:

Rule 6:	By striking out said rule and inserting in lieu thereof the new Rule 6 attached hereto.
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The amendment accomplished by this order shall take effect on October 1, 2009.

<u>MARGARET H. MARSHALL</u>)	
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<u>RODERICK L. IRELAND</u>)	
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)	
<u>FRANCIS X. SPINA</u>)	
)	Justices
)	
<u>JUDITH A. COWIN</u>)	
)	
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<u>ROBERT J. CORDY</u>)	
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<u>MARGOT BOTSFORD</u>)	
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<u>RALPH D. GANTS</u>)	

Mass. R.A.P.

Rule 6. Stay or Injunction Pending Appeal

(a) Civil Cases.

(1) Stay Must Ordinarily be Sought in the First Instance in Lower Court; Motion for Stay in Appellate Court. In civil cases, an application for a stay of the judgment or order of a lower court pending appeal, or for approval of a bond under subsection (a) (2) of this rule, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the lower court. A motion for such relief may be made to the appellate court or to a single justice, but the motion shall show that application to the lower court for the relief sought is not practicable, or that the lower court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the lower court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other statements signed under the penalties of perjury or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk of the appellate court to which the appeal is being taken (provided that if the court be the Supreme Judicial Court, the motion shall be filed with the clerk of the Supreme Judicial Court for Suffolk County).

(2) Stay May Be Conditioned Upon Giving of Bond; Proceedings Against Sureties. Relief available in the appellate court under this rule may be conditioned upon the filing of a bond or other appropriate security in the lower court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety thereby shall submit to the jurisdiction of the lower court and irrevocably appoint the clerk of the lower court as an authorized agent upon whom any papers affecting liability on the bond or undertaking may be served. A surety's liability may be entered against the surety on motion in the lower court without the necessity of an independent action. The motion and such notice of the motion as the lower court prescribes may be served on the clerk of the lower court, who shall forthwith mail copies to the sureties if their addresses are known.

(3) Terms. Relief available in the appellate court under this rule, or denial of such relief, may be conditioned on such reasonable terms as the appellate court or single justice may impose. For failure to observe such terms, the appellate court or single justice may make such further order as it or he deems just and appropriate.

(b) Criminal Cases. A motion for a stay of execution of a sentence shall be governed by paragraph (b) of this rule and by Massachusetts Rules of Criminal Procedure 31

(1) Stay Must Ordinarily be Sought in the First Instance in Lower Court; Motion for Stay in Appellate Court. In criminal cases, an application for a stay of execution of a sentence pending

appeal must ordinarily be made in the first instance in the lower court. A motion for such relief may be made to the single justice of the appellate court to which the appeal is being taken, but the motion shall show that application to the lower court for the relief sought is not practicable, or that the lower court has previously denied an application for a stay or has failed to afford the relief which the applicant requested with the reasons given by the lower court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other statements signed under the penalties of perjury or copies thereof. With the motion shall be filed such parts of the record as are relevant. The motion shall be filed with the clerk of the appellate court to which the appeal is being taken (provided that if the court be the Supreme Judicial Court, the motion shall be filed with the clerk of the Supreme Judicial Court for Suffolk County).

(2) Reasonable Notice. Reasonable notice of the motion for a stay shall be given to the Commonwealth. If the motion is filed at least 30 days prior to the date the appellant's brief is due, the time for a response shall be governed by Rule 15. If the motion is filed at any other time, the Commonwealth shall have 30 days to respond. A single justice may shorten or extend the time for responding to any motion authorized by this Rule.

(3) Appealability of Single Justice Order. Finality. An order by the single justice allowing or denying an application for a stay may be appealed to the appellate court in which the appeal is pending. An order by the appellate court in which the appeal is pending, allowing or denying an application for a stay, shall be final.

(4) Revocation of Stay Pending Appeal. If a defendant fails at any time to take any measure necessary for the hearing of an appeal or report, a stay of execution of a sentence may, on motion of the Commonwealth, be revoked.

(5) Expiration of Stay. Upon the release of the rescript by the appellate court of a judgment affirming the conviction, the stay of execution of sentence automatically expires, unless extended by the appellate court.

(6) Notice of Expiration of Stay. Upon release of a rescript affirming the conviction, the clerk of the appellate court shall notify the clerk of the trial court and the parties that the conviction has been affirmed and that therefore, the stay of execution of sentence has automatically expired.